



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0825]

RIN 1625-AA00

Safety Zone; United Illuminating Company, Housatonic River Crossing Project; Milford and Stratford, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is amending a temporary safety zone on the Housatonic River near Milford and Stratford, CT. Amending the safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the United Illuminating Company Housatonic River Crossing Project. This regulation prohibits entry of vessels or people into the safety zone unless authorized by the Captain of the Port Sector Long Island Sound. The safety zone will only be enforced during cable pulling operations or other instances which may create a hazard to navigation

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through August 31, 2017. For the purposes of enforcement, actual notice will be used from June 12, 2017 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2016-0825 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Petty Officer Katherine Linnick, Prevention Department, U.S. Coast Guard Sector Long Island Sound, telephone (203) 468-4565, e-mail Katherine.E.Linnick@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
LIS	Long Island Sound
NPRM	Notice of Proposed Rulemaking
NAD 83	North American Datum 1983
TFR	Temporary final rule

II. Background Information and Regulatory History

This rulemaking amends a temporary safety zone for certain waters of the Housatonic River near Milford and Stratford, CT. Corresponding regulatory history is discussed below.

On August 25, 2016, United Illuminating Company notified the Coast Guard that it would conduct a project involving the installation of new transmission conductors over the Housatonic River near Stratford and Milford, CT. On March 14, 2017, the Coast Guard published a NPRM entitled, “Safety Zone; United Illuminating Company Housatonic River Crossing Project; Housatonic River; Milford and Stratford, CT” in the **Federal Register** (80 FR 13572). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this transmission project. During the comment period that ended April 13, 2017, we received zero comments.

On May 22, 2017, the Coast Guard published a TFR entitled, “Safety Zone; United Illuminating Company Housatonic River Crossing Project; Housatonic River; Milford and Stratford, CT” in the **Federal Register** (82 FR 23144). This project was schedule to be completed in two phases. The first phase involving the stringing of optical fiber ground wires on the North circuit of the project was scheduled to begin on April, 26, 2017 through May 4, 2017. The second phase involves the stringing of optical fiber ground wires on the South circuit from July 29, 2017 through August 3, 2017.

On May 10, 2017, United Illuminating Company notified the Coast Guard that due to foul weather it was behind schedule and was unable to complete phase one as described in the above-mentioned TFR. The project is now scheduled to begin on June 12, 2017 and be completed by August 31, 2017. Due to fluctuations in the project’s schedule, the safety zone is being amended to permit enforcement of the safety zone during re-scheduled cable installation operations or other instances which may cause a hazard to navigation. The COTP Long Island Sound (LIS) has determined that the potential hazards associated with the cable installation project could be a safety concern for anyone within the work area. The work area is between the eastern and western shores of the Housatonic River. The southern boundary of the work zone begins at the Metro-North Rail Bridge and extends north approximately 525 feet upstream.

The Coast Guard is amending §165.T01-0825 without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule

because doing so would be impracticable and contrary to the public interest. The late finalization of project details after weather delays did not give the Coast Guard enough time to publish an NPRM, take public comments regarding the amendments to §165.T01-0825, and issue a new final rule before the rescheduled cable crossing operation is set to begin. It would be impracticable and contrary to the public interest to delay promulgating the amendments to this rule as it is necessary to protect the safety of the public and waterway users.

Under 5 U.S.C. 553(d)(3), and for the same reasons stated in the preceding paragraph, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The legal basis for this temporary rule is 33 U.S.C. 1231. The COTP LIS has determined that potential hazards associated with the river cable crossing project starting on June 12, 2017 and continuing through August 31, 2017 will be a safety concern for anyone within the work zone. This rule is needed to protect people and vessels within the safety zone while the cable crossing project is completed.

IV. Discussion of the Rule

This rule amends the temporary safety zone in §165.T01-0825. The safety zone will cover all navigable waters of the Housatonic River near Milford and Stratford, CT contained within the following area: beginning at a point on land in position at 41°12'17" N, 073°06'40" W near the Governor John Davis Lodge Turnpike (I-95) Bridge; then northeast across the Housatonic River to a point on land in position at 41°12'20" N, 073°06'29" W near the Governor John Davis Lodge Turnpike (I-95) Bridge; then northwest along the shoreline to a point on land in position at 41°12'25" N, 073°06'31" W; then southwest across the Housatonic

River to a point on land in position at 41°12'22" N, 073°06'43" W; then southeast along the shoreline back to point of origin (NAD 83). All positions are approximate. The duration of the zone is intended to ensure the safety of people and vessels in these navigable waters during any instance that necessitates a temporary closure of the Housatonic River at the work site. The safety zone will only be enforced during cable installation operations or other instances, when they cause a hazard to navigation. During enforcement periods, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the Federal Register, the Local Notice to Mariners, and Broadcast Notice to Mariners via VHF-FM marine channel 16 eight hours in advance of any scheduled enforcement period. The regulatory text we are enforcing appears at the end of this document.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order

12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone which will affect a small, designated area of the Housatonic River for less than one hour at a time. It also may be enforced temporarily during the cable installation project if necessitated by an emergency. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit this regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or

Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary rule involves a safety zone enforced for less than one hour at a time that would prohibit entry within the work zone during cable installation. It also may be enforced temporarily during the cable installation project if necessitated by an emergency, such as equipment falling from the towers into the Housatonic River. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A Record of Environmental Consideration (REC) is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise §165.T01-0825 to read as follows:

§165.T01-0825 Safety Zone; United Illuminating Company; Housatonic River Crossing Project; Milford and Stratford, CT.

(a) Location. The following area is a safety zone: All navigable waters of the Housatonic River near Milford and Stratford, CT contained within the following area; beginning at a point on land in position at 41°12'17" N, 073°06'40" W near the Governor John Davis Lodge Turnpike (I-95) Bridge; then northeast across the Housatonic River to a point on land in position at 41°12'20" N, 073°06'29" W near the Governor John Davis Lodge Turnpike (I-95) Bridge; then northwest along the shoreline to a point on land in position at 41°12'25" N, 073°06'31" W; then southwest across the Housatonic River to a point on land in position at 41°12'22" N,

073°06'43" W; then southeast along the shoreline back to point of origin (NAD 83). All positions are approximate.

(b) Effective and enforcement period. This rule will be effective from 8:00 a.m. on June 12, 2017 to 6:00 p.m. on August 31, 2017, but will only be enforced during cable installation operations or other instances which may cause a hazard to navigation, when deemed necessary by the Captain of the Port (COTP), Sector Long Island Sound. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 eight hours in advance to any scheduled period of enforcement or as soon as practicable in response to an emergency.

(c) Definitions. The following definitions apply to this section: A “designated representative” is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. “Official patrol vessels” may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation. A “work vessel” is any vessel provided by United Illuminating Company for the Housatonic River Crossing Project and may be hailed via VHF channel 13 or 16.

(d) Regulations. (1) The general regulations contained in § 165.23 apply.

(2) In accordance with the general regulations in § 165.23, entry into or movement within this zone is prohibited unless authorized by the COTP Long Island Sound.

(3) Operators of vessels desiring to enter or operate within the safety zone should contact the COTP Long Island Sound at 203-468-4401 (Sector Long Island Sound Command Center) or the

designated representative via VHF channel 16 to obtain permission to do so. Request to enter or operate in the safety zone must be made 24 hours in advanced of the planned undertaking.

(4) Mariners are requested to proceed with caution after passing arrangements have been made. Mariners are requested to cooperate with the United Illuminating Company work vessels for the safety of all concerned. The United Illuminating Company work vessels will be monitoring VHF channels 13 and 16. Mariners are requested to proceed with extreme caution and operate at their slowest safe speed as to not cause a wake.

(5) Any vessel given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Long Island Sound, or the designated on-scene representative.

(6) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

Dated: June 8, 2017.

A.E. Tucci,
Captain, U. S. Coast Guard,
Captain of the Port Long Island Sound.

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